


FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION

2016 APR 20 PM 1:40

CLERK US DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

BY:  DEPUTY

APOGEE TELECOM, INC.,  
Plaintiff,

-vs-


Case No. A-16-CA-061-SS

ROBERT JOHN DUNGAN, II; EMERGE, INC.;  
EMERGE NETWORKS, LLC; MARION  
BURCHAM; STEVEN WOODCOCK; and  
KEITH MONFILS,  
Defendants.

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**ORDER**

BE IT REMEMBERED on this day the Court received a copy of “Notice of Agreement to Extend Plaintiff’s Response Date to Defendant Marion Burcham’s Dispositive Motion” [#56] filed on April 13, 2016 and the Court, not having any such pleading, inquired of the Clerk who advised no such pleading had been filed. The Clerk subsequently discovered “Defendant Burcham’s Memorandum of Law in Support of Her Motion to Dismiss” and “Attorney Affidavit in Support of Marion Burcham’s Motion to Dismiss” were attached by the filer to “Consent to and Joinder in Notice of Removal” [#54 filed March 31, 2016]. These were erroneously filed as one document, and the Memorandum of Law in Support of Burcham’s Motion to Dismiss and the affidavit of counsel regarding the motion to dismiss shall be individually placed in the record by the Clerk. Further review of the record shows “Consent to Joinder in Notice of Removal” [#60] was filed on behalf of defendant Steven Woodcock. The filer erroneously filed this notice as a motion, which requires additional attention by the Clerk’s Office to rectify and maintain a record that is clear, complete, and error free.



IT IS THEREFORE ORDERED that the Clerk show on the docket separate filings for the "Consent to and Joinder in the Notice of Removal" and "Defendant Burcham's Memorandum of Law in Support of Her Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)" filed under Doc. 54. The Attorney Affidavit in Support of Marion Burcham's Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b), also filed under Doc. 54, shall be attached as an exhibit to "Defendant Burcham's Memorandum of Law in Support of Her Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)."

IT IS FURTHER ORDERED that Doc. 60 shall be corrected to reflect it is a notice, not a pending motion.

It is also noted by the Clerk and by the Court that there is no motion to dismiss filed. The undersigned is advised that the Clerk attempted to straighten this matter out by calling counsel for Marion Burcham who is responsible for the filings at issue, and Mr. Smith advised he was not a rule follower but gave no statement that he would correct this erroneous filing himself. Mr. Smith's filing of all of these pleadings in one attachment was inappropriate as was his comment to the Clerk of this Court. Notwithstanding his statement that he was not a rule follower, the Court advises Mr. Smith to follow the rules henceforth.

In light of the Notice of Agreement, IT IS ORDERED that the plaintiff shall respond to the imaginary motion to dismiss by July 27, 2016.

SIGNED this the 20<sup>th</sup> day of April 2016.

  
UNITED STATES DISTRICT JUDGE